

FIRST REGULAR SESSION

SENATE BILL NO. 452

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2090S.011

AN ACT

To repeal section 620.1878, RSMo, and to enact in lieu thereof one new section relating to qualified companies under the Missouri Quality Jobs Act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 620.1878, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 620.1878, to read as follows:

620.1878. For the purposes of sections 620.1875 to 620.1890, the following
2 terms shall mean:

3 (1) "Approval", a document submitted by the department to the qualified
4 company that states the benefits that may be provided by this program;

5 (2) "Average wage", the new payroll divided by the number of new jobs;

6 (3) "Commencement of operations", the starting date for the qualified
7 company's first new employee, which must be no later than twelve months from
8 the date of the approval;

9 (4) "County average wage", the average wages in each county as
10 determined by the department for the most recently completed full calendar
11 year. However, if the computed county average wage is above the statewide
12 average wage, the statewide average wage shall be deemed the county average
13 wage for such county for the purpose of determining eligibility. The department
14 shall publish the county average wage for each county at least
15 annually. Notwithstanding the provisions of this subdivision to the contrary, for
16 any qualified company that in conjunction with their project is relocating
17 employees from a Missouri county with a higher county average wage, the
18 company shall obtain the endorsement of the governing body of the community
19 from which jobs are being relocated or the county average wage for their project
20 shall be the county average wage for the county from which the employees are

21 being relocated;

22 (5) "Department", the Missouri department of economic development;

23 (6) "Director", the director of the department of economic development;

24 (7) "Employee", a person employed by a qualified company;

25 (8) "Full-time employee", an employee of the qualified company that is
26 scheduled to work an average of at least thirty-five hours per week for a
27 twelve-month period, and one for which the qualified company offers health
28 insurance and pays at least fifty percent of such insurance premiums;

29 (9) "High-impact project", a qualified company that, within two years from
30 commencement of operations, creates one hundred or more new jobs;

31 (10) "Local incentives", the present value of the dollar amount of direct
32 benefit received by a qualified company for a project facility from one or more
33 local political subdivisions, but shall not include loans or other funds provided to
34 the qualified company that must be repaid by the qualified company to the
35 political subdivision;

36 (11) "NAICS", the 1997 edition of the North American Industry
37 Classification System as prepared by the Executive Office of the President, Office
38 of Management and Budget. Any NAICS sector, subsector, industry group or
39 industry identified in this section shall include its corresponding classification in
40 subsequent federal industry classification systems;

41 (12) "New direct local revenue", the present value of the dollar amount of
42 direct net new tax revenues of the local political subdivisions likely to be
43 produced by the project over a ten-year period as calculated by the department,
44 excluding local earnings tax, and net new utility revenues, provided the local
45 incentives include a discount or other direct incentives from utilities owned or
46 operated by the political subdivision;

47 (13) "New investment", the purchase or leasing of new tangible assets to
48 be placed in operation at the project facility, which will be directly related to the
49 new jobs;

50 (14) "New job", the number of full-time employees located at the project
51 facility that exceeds the project facility base employment less any decrease in the
52 number of full-time employees at related facilities below the related facility base
53 employment. No job that was created prior to the date of the notice of intent
54 shall be deemed a new job. An employee that spends less than fifty percent of the
55 employee's work time at the facility is still considered to be located at a facility
56 if the employee receives his or her directions and control from that facility, is on

57 the facility's payroll, one hundred percent of the employee's income from such
58 employment is Missouri income, and the employee is paid at or above the state
59 average wage;

60 (15) "New payroll", the amount of taxable wages of full-time employees,
61 excluding owners, located at the project facility that exceeds the project facility
62 base payroll. If full-time employment at related facilities is below the related
63 facility base employment, any decrease in payroll for full-time employees at the
64 related facilities below that related facility base payroll shall also be subtracted
65 to determine new payroll;

66 (16) "Notice of intent", a form developed by the department, completed by
67 the qualified company and submitted to the department which states the
68 qualified company's intent to hire new jobs and request benefits under this
69 program;

70 (17) "Percent of local incentives", the amount of local incentives divided
71 by the amount of new direct local revenue;

72 (18) "Program", the Missouri quality jobs program provided in sections
73 620.1875 to 620.1890;

74 (19) "Project facility", the building used by a qualified company at which
75 the new jobs and new investment will be located. A project facility may include
76 separate buildings that are located within one mile of each other or within the
77 same county such that their purpose and operations are interrelated;

78 (20) "Project facility base employment", the greater of the number of
79 full-time employees located at the project facility on the date of the notice of
80 intent or for the twelve-month period prior to the date of the notice of intent, the
81 average number of full-time employees located at the project facility. In the event
82 the project facility has not been in operation for a full twelve-month period, the
83 average number of full-time employees for the number of months the project
84 facility has been in operation prior to the date of the notice of intent;

85 (21) "Project facility base payroll", the total amount of taxable wages paid
86 by the qualified company to full-time employees of the qualified company located
87 at the project facility in the twelve months prior to the notice of intent, not
88 including the payroll of the owners of the qualified company unless the qualified
89 company is participating in an employee stock ownership plan. For purposes of
90 calculating the benefits under this program, the amount of base payroll shall
91 increase each year based on an appropriate measure, as determined by the
92 department;

93 (22) "Project period", the time period that the benefits are provided to a
94 qualified company;

95 (23) "Qualified company", a firm, partnership, joint venture, association,
96 private or public corporation whether organized for profit or not, or headquarters
97 of such entity registered to do business in Missouri that is the owner or operator
98 of a project facility, offers health insurance to all full-time employees of all
99 facilities located in this state, and pays at least fifty percent of such insurance
100 premiums. For the purposes of sections 620.1875 to 620.1890, the term "qualified
101 company" shall not include:

102 (a) Gambling establishments (NAICS industry group 7132);

103 (b) Retail trade establishments (NAICS sectors 44 and 45);

104 (c) Food and drinking places (NAICS subsector 722);

105 (d) Public utilities (NAICS 221 including water and sewer services);

106 (e) Any company that is delinquent in the payment of any nonprotested
107 taxes or any other amounts due the state or federal government or any other
108 political subdivision of this state;

109 (f) Any company that has filed for or has publicly announced its intention
110 to file for bankruptcy protection. **Provided, however, that any qualified**
111 **company that files for or publicly announces its intention to file for**
112 **bankruptcy protection after meeting the minimum new jobs threshold**
113 **may continue to retain authorized amounts from the withholding tax**
114 **during the pendency of the bankruptcy for the duration of the project**
115 **period provided that:**

116 a. **It certifies to the department that it plans to reorganize and**
117 **not to liquidate;**

118 b. **It continues to meet the minimum new jobs threshold; and**
119 **otherwise continues to meet the definition of "qualified company" under**
120 **section 620.1878; and**

121 c. **After its bankruptcy petition has been filed, it produces proof,**
122 **in a form satisfactory to the department, that it is not delinquent in**
123 **filing any tax returns or making any payment due to the state of**
124 **Missouri, including but not limited to, all tax payments due after the**
125 **filing of the bankruptcy petition and under the terms of the plan of**
126 **reorganization. If the department learns at any time that the company**
127 **is delinquent in any such payments due to the state of Missouri, it may**
128 **suspend the company's right to retain withholding tax until such**

129 delinquency is cured;

130 (g) Educational services (NAICS sector 61);

131 (h) Religious organizations (NAICS industry group 8131);

132 (i) Public administration (NAICS sector 92);

133 (j) Ethanol distillation or production; or

134 (k) Biodiesel production. Notwithstanding any provision of this section
135 to the contrary, the headquarters or administrative offices of an otherwise
136 excluded business may qualify for benefits if the offices serve a multistate
137 territory. In the event a national, state, or regional headquarters operation is not
138 the predominant activity of a project facility, the new jobs and investment of such
139 headquarters operation is considered eligible for benefits under this section if the
140 other requirements are satisfied;

141 (24) "Qualified renewable energy sources" shall not be construed to
142 include ethanol distillation or production or biodiesel production; however, it shall
143 include:

144 (a) Open-looped biomass;

145 (b) Close-looped biomass;

146 (c) Solar;

147 (d) Wind;

148 (e) Geothermal; and

149 (f) Hydropower;

150 (25) "Related company" means:

151 (a) A corporation, partnership, trust, or association controlled by the
152 qualified company;

153 (b) An individual, corporation, partnership, trust, or association in control
154 of the qualified company; or

155 (c) Corporations, partnerships, trusts or associations controlled by an
156 individual, corporation, partnership, trust or association in control of the
157 qualified company. As used in this subdivision, "control of a corporation" shall
158 mean ownership, directly or indirectly, of stock possessing at least fifty percent
159 of the total combined voting power of all classes of stock entitled to vote, "control
160 of a partnership or association" shall mean ownership of at least fifty percent of
161 the capital or profits interest in such partnership or association, "control of a
162 trust" shall mean ownership, directly or indirectly, of at least fifty percent of the
163 beneficial interest in the principal or income of such trust, and ownership shall
164 be determined as provided in Section 318 of the Internal Revenue Code of 1986,

165 as amended;

166 (26) "Related facility", a facility operated by the qualified company or a
167 related company located in this state that is directly related to the operations of
168 the project facility;

169 (27) "Related facility base employment", the greater of the number of
170 full-time employees located at all related facilities on the date of the notice of
171 intent or for the twelve-month period prior to the date of the notice of intent, the
172 average number of full-time employees located at all related facilities of the
173 qualified company or a related company located in this state;

174 (28) "Related facility base payroll", the total amount of taxable wages paid
175 by the qualified company to full-time employees of the qualified company located
176 at a related facility in the twelve months prior to the filing of the notice of intent,
177 not including the payroll of the owners of the qualified company unless the
178 qualified company is participating in an employee stock ownership plan. For
179 purposes of calculating the benefits under this program, the amount of related
180 facility base payroll shall increase each year based on an appropriate measure,
181 as determined by the department;

182 (29) "Rural area", a county in Missouri with a population less than
183 seventy-five thousand or that does not contain an individual city with a
184 population greater than fifty thousand according to the most recent federal
185 decennial census;

186 (30) "Small and expanding business project", a qualified company that
187 within two years of the date of the approval creates a minimum of twenty new
188 jobs if the project facility is located in a rural area or a minimum of forty new
189 jobs if the project facility is not located in a rural area and creates fewer than one
190 hundred new jobs regardless of the location of the project facility;

191 (31) "Tax credits", tax credits issued by the department to offset the state
192 income taxes imposed by chapters 143 and 148, RSMo, or which may be sold or
193 refunded as provided for in this program;

194 (32) "Technology business project", a qualified company that within two
195 years of the date of the approval creates a minimum of ten new jobs involved in
196 the operations of a company:

197 (a) Which is a technology company, as determined by a regulation
198 promulgated by the department under the provisions of section 620.1884 or
199 classified by NAICS codes;

200 (b) Which owns or leases a facility which produces electricity derived from

201 qualified renewable energy sources, or produces fuel for the generation of
202 electricity from qualified renewable energy sources, but does not include any
203 company that has received the alcohol mixture credit, alcohol credit, or small
204 ethanol producer credit pursuant to 26 U.S.C. Section 40 of the tax code in the
205 previous tax year; or

206 (c) Which researches, develops, or manufactures power system technology
207 for: aerospace; space; defense; hybrid vehicles; or implantable or wearable
208 medical devices;

209 (33) "Withholding tax", the state tax imposed by sections 143.191 to
210 143.265, RSMo. For purposes of this program, the withholding tax shall be
211 computed using a schedule as determined by the department based on average
212 wages.

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Bill

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